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THE LATE HON'BLE V. KRISHNASWAMI AIYAR, C.S.I.

With the deepest sorrow we have to record the sad and sudden death of the Hon'ble V. Krishnaswami Aiyar, C. S. I., who was the Senior Editor of this journal for nearly 18 years, on the morning of the 28th December at the early age of 49, after a brief illness of about a fortnight. He went to attend the Coronation Durbar at Delhi, and although he attended the public functions on the 7th December he was not able to attend the ceremonies that took place on the 12th December, the Durbar Day, owing to some slight inflammation in his thigh. He returned to Madras at once and after undergoing an operation, which gave us hopes of his recovery, he ultimately succumbed to the illness that attacked him. Although it could not be said that he was in very robust health for some time, nobody ever suspected that he would be taken away from us so soon. He has passed away in the full vigour of manhood, and his death has created a void which it will be difficult to fill for a long time. His life was one of varied and unbounded activity, and he devoted himself heart and soul to everything calculated to advance the interests of his country and his countrymen. A man of spotless character, he had a head of unusual vigour and a heart full of benevolence, sympathy and generosity. We need hardly remind our readers that he was one of those who first started this journal and was connected with it almost till a year before his death and continued to take a keen interest in its management up to his death. He was a tower of strength to us, and the success of this journal has been in a large measure due to his energy, co-operation and sound advice. It has been our proud privilege to have been closely associated with him for over twenty years. His very presence was a source of inspiration to us as it was to all who came in contact with him. We can hardly give expression, at this moment of poignant sorrow, to the magnitude of our loss, and we reserve for a future occasion a detailed review of his brilliant career and varied activities.

Death has robbed us of his physical presence but cannot deprive us of the memory and influence of his noble and brilliant career and of the inspiration we shall ever derive from the recollection of his noble example and great work.

HINDU JURISPRUDENCE—A STUDY.

(*Continued from page* 482).

While in this connection I may state that since the grant of the Charter to the High Court which synchronised with the first introduction of the Legislative Council by the Reform Act of 1861 innumerable changes have occurred both in Southern India and elsewhere. Now that the new Reform Statute, going by the name of Lord Morley, has been passed, the grant of a fresh Charter to the High Court, suited to the present day circumstances of this country, will be in keeping with what occurred in 1861. The new Charter should provide for additional judges being appointed when it is found necessary and should abolish the proviso requiring that the Chief Justice should only be a Barrister Why the Chief Justice should be selected only from among the ranks of Barristers one fails to see. That qualification might have been necessary in those days when there were no Vakils, Advocates and other members of the Indian Bar and when most offices were held by Civilians. The times have rapidly changed and other classes of practitioners, such as Advocates, Vakils, etc., have come to prominence. I believe the promotion of a puisne judge, whether a Civilian, Vakil, or Barrister, to the post of Chief Justice will be a step in the right direction and viewed with satisfaction by the community and by members of the bar. If we have the system prevailing in Bombay by which I understand the Civilian is made to select his line (either in the judicial or revenue) after some years and if the two lines are treated as separate and independent, [1] there can be no objection on principle even to the appointment of Civilian Chief Justices.

As regards Puisne Judges if the rule as to proportion is to be kept at all, it should be expressly recognised that 1/3rd should be selected from among the Vakils; and in applying this rule as to proportion, fractions may be disregarded, but I think it better if

1. The main objection to a civilian being appointed is the apprehension that the independence of the Bench which is essential for the well-being of society may be affected. But if the civilian who joins the judicial line cannot be made to join the Revenue or Executive line afterwards and it is made a rule that he cannot become Member of the Executive Council under any circumstances, this objection will lose force.

the proportion as between Barristers and Judges be left out so that a freer hand be given to select the most capable among either class according to the state of circumstances existing at any particular time.

I may also suggest that a Superior Tribunal for the whole of India may be constituted which will be enabled to deal with the hopeless conflict of decisions in the different High Courts more expeditiously and cheaply. There are several topics in which the law should be uniform in all the Presidencies, especially when there are no divergencies of school to reckon with. There are again several Statutes governing the whole of India and the desirability and advantage of certainty in the law and of a uniform rule of construction upon the sections of the Statutes can hardly be gainsaid. It will be a Supreme Court of Appeal for India like the courts existing in some of the colonies and appeals to the Judicial Committee as an ultimate court of resort may, if necessary, be allowed in extremely rare cases*. This Supreme Court of Appeal may be manned partly by one or two Judges from the High Courts and partly by people outside the High Court *viz.*, from the Bar. The suggestion has been made in some quarters that the Coronation at Dehli should mark the surrender of the old Charter and grant of new ones, and the grant of Charters on the lines indicated, with previous legislation to give effect to it, would be regarded as an immense boon by the people of this country.

Returning from this digression the last matter o be dealt with is the procedure of our courts. There is the plaint, otherwise called the declaration, which initiates the judicial proceeding[1]. Before the summons the plaintiff may be interrogated with regard to his case[2]. Summons is issued thereupon with the King's Seal[3] and if the defendant absconds or does not give security he may be arrested beforehand[4]. The defendnat then appears before the King[5]. Then the plaintiff's declaration should be recorded with certain further particulars[6]. The

* Of late the dissatisfaction in the Judgments of the Judicial Committee is growing and apparently India is not the only country which is so dissatisfied :—ED.

1. Mitakshara, Ch. I. § 2 pl. 1. MacNaughten, p. 141.
2. *Ibid.* Ch. I. § 3 pl. 1. Do. 144.
3. *Ibid.* *Ibid.* *Ibid.*
4. *Ibid.* Ch. I. § 3 pl. 7. 146.
5. *Ibid.* Ch. I. § 4 pl. 1. 147.
6. *Ibid.* *Ibid.* *Ibid.*

plaintiff canamend his declaration until the defendant's answer[1]. The answer of the defendant should then be recorded[2]. He must then and there reduce to writing the evidence of the thing to be proved[3]. In some cases a rejoinder is allowed[4]

The plaint or declaration is required to contain certain particulars, the details of which are mentioned in the books[5]. So also the plaintiff's 2nd declaration; the plaintiff can write several causes of action against the same defendant, although in such a case the investigation or trial should be separate and not simultaneous[6]. A verbal error does not annul the claim though it seems to be otherwise in criminal cases according to the Mitakshara[7]. As regards the answer it should also conform to certain requisites; otherwise it will not be regarded as such[8]. The pleas of the defendant may be four-fold[9]: (1) a confession; (2) a denial; (3) a specific plea, and (4) former judgment, or our modern troublesome friend *res-judicata*. Although the first two pleas appear to be simple, elaborate rules are given as to their meaning, especially as to the nature of denial[10]. As regards the third it is explained thus [11]:—"A special plea is when the defendant admits the demand but avoids it by pleading a general acquittance or that he had received the money as a present." It is what in English law is termed a plea of confession and avoidance. The plea of former judgment is well known and needs no discussion.

Certain rules as to onus or the right or the duty of a party to begin are next laid down[12]. Although the law recognises ordeals and an elaborate procedure is laid down as regards the

1. Mitakshara Ch. I. § 4 pl. 15. 154. and Narada Introduction II §§ 7 S-B-E. XXXIII p. 25.
2. *Ibid.* Ch. I. § 5. pl. 1. 154.
3. *Ibid.* Ch. I. § 5 pl. 2. 155.
4. Narada, Introduction II §§ 21. S.B.E., Vol. XXXIII p. 29.
5. Mitakshara Ch. I. § 4 pl. 12. 152.
6. *Ibid.* ... ...
7. Narada Introduction II §§ 25. S.B.E., Vol. XXXIII p. 29.
8. Mitakshara Ch. I. § 5 pl. 3. p. 155.
9. Do. Ch. I. § 5 pl. 5. p. 156
10. Do. Ch. I. § 5 pl. 7. p. 156.
11. Do. Ch. I. § 5 pl. 9. p. 157.
12. Do. Ch. I. § 6 p.p. 154 to 166.

different kinds of ordeals, these can be resorted to only when reasoning fails the judge to arrive at the truth, *i. e.*, when a conclusion cannot be come to upon the oral and documentary evidence[1]. If there are no witnesses and documents and the parties consent, then alone some of these ordeals can be resorted to. If the parties do not consent they cannot be resorted to[2]. In the case of women and certain others they cannot be resorted to in any case[3]. The judgment should be recorded and a record of the same given to the successful party which should contain an accurate record of the plaint, answer and judicial investigation[4].

There seems to be a review allowed, but apparently the person applying for the same should pledge himself to pay twice the amount of the fine[5].

So a retrial can be ordered where a man has lost his cause through the dishonesty of the witnesses or judges.[6] Perjured witness giving false evidence, the King must reverse judgment. Gradations of courts are, as already said, mentioned in the books, and appeals are allowed from one court to another in the inverse order[7]. The King is the highest Court of Appeal as stated above.

Such in brief are the outlines of our Jurisprudence. I have omitted, from considerations of time, other topics of law—the Law of Contracts, Landlord and Tenant, Master and Servants and certain other topics. The subject is of perennial interest, especially to us lawyers. Reforms are attempted by persons without a study of our institutions as disclosed in our books—institutions which have survived the ravages of time and the waves of conquest. Nobody can deny that reforms are necessary in some if not in many of our institutions; otherwise there is stagnation and no hope of progress. But let us not ape Western methods and ideals. Let us take the benefit of the experience

1. Narada Ch. I. §§ 247. S.B E., Vol. XXXIII, p. 100.
2. Narada I. §§ 258 S B E., Vol. XXIII, p. 102.
3. Do. §§ 256 Do. 101.
4. Do- I §§ 72 and 73. Do. 23.
5. Do. I § 65. Do. 22.
6. Vishnu Ch. VIII §§ 40 S-B-E, Vol. VII p. 52.
7. See Macnaughten Vol. I, p. 222 and see also Narada, Introduction I. §§ 6 and 7 S,B.E., Vol. XXXIII, pp. 6 and 7

given to us by our ancestors and the wisdom of our sages who sacrificed their whole lives, devoted their entire energies, to make Hindu civilisation ennobling and elevating. Let us not, who are engrossed in our own bread-earning pursuits and who have not even the time to study ancient books, condemn our institutions merely because they are opposed to our Western notions. Let us avoid evils, but in our desire to do so, let us not fly to other evils which we know not of. Let us build on the model of the grand superstructure left to us by our ancestors. Let us mend and not end it. A reform which does not carry the masses is of no use. You must take the people and you cannot do so unless you work upon the ideals which they have been accustomed to. So also a reform which is in advance of the times will practically be a dead-letter and will work more harm than good. It will surely retard even the natural progress of society. Let those of us who have reforming tendencies and have, of course, not the leisure and time which our sages bestowed for working out the exaltedness of ancient India, first understand the true import of our institutions from a study of our ancient books. Such a study will surely not be in vain both for the lawyer and the reformer.